IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO 788 OF 2006

Santosh Mohan Arawattigi
and anr. ...Petitioners.

V/s

State of Maharashtra ...Respondent.

Mr. Nitin Pradhan i/b Shubhada Khot for the petitioners.

Mr. S.R. Borulkar, Chief P.P. with Ms. M.M. Deshmukh, APP for the State.

CORAM: V.M. KANADE, J.
DATE: 3rd March, 2006

P.C.:

1. Heard the learned Counsel for the Petitioners and

the learned Chief Public Prosecutor for the State.

2. This is an application for anticipatory bail filed by the Petitioners who have an apprehension that they are likely to be arrested in connection with CR No. 7 of 2006 at Vadgaon Police Station, Kolhapur for the offence punishable under sections 3 and 7 of the Essential Commodities Act and under section 285 of the Indian Penal Code and sections 130 and 177 of the Motor Vehicles Act. The petitioner No.1, admittedly, is a proprietor of M/s Arawattigi Brothers Petrol Pump at Tanang Phata and another petrol pump at

Miraj-Sangli Road. The Petitioner No.1 is carrying on business as authorized dealer since last 39 years. The son of Petitioner No.1 herein is also assisting him in the conduct of the said business. Petitioner No.2 is a manager of the said petrol pump.

3. It is the case of the Petitioners that one Vithal Nawale, a Government Contractor, had placed an order for 12000 litres of diesel for its transportation at Arla Site in Karvir Taluka, District Kolhapur as it was required in the construction work which was in progress. Accordingly, a tanker was hired for the purpose of its transport and on 9/2/2006 a credit memo was issued and relevant entries were mentioned in the Daily Sales Register. The said tanker was seized by PI Suresh Bhosale and the Head Constable Sunil Kamble while they were on patrolling duty. It is alleged that another tanker was standing besides this tanker and driver and the cleaner were trying to fill up the empty tanker. They could not give satisfactory replies to the questions which were asked by the Police Officers and, therefore, a panchanama was conducted and both the tankers were taken in possession and an offence under sections 3 and 7 of the Essential Commodities Act was registered.

4. The learned Counsel for the petitioners submits that apart from mentioning the provisions of sections 3 and 7 of the Essential Commodities Act, there is no specific reference regarding the alleged violation of any provisions of the Essential Commodities Act or rules framed thereunder. He submitted that the petitioners were authorized dealers and were authorized to sell the petrol from their petrol pump and that they were maintaining the necessary Registers. There was no restriction for sale of any particular quantity to any person. There was further no restriction on the person to whom the said sale would be made. He submitted that therefore no offence was committed by the Petitioners under the provisions of the said Act.

5. Shri Borulkar, the learned Chief Public Prosecutor invited my attention to the order issued by the Ministry of Petroleum and Natural Gas dated 19/12/2005 in exercise of the powers conferred by section 3 of the Essential Commodities Act. This order was issued for the purpose of regulation of supply, distribution and prevention of malpractices in petroleum products. The said order specified various types of malpractices in clause (f). Clause (f) lays down that unauthorized

exchange and unauthorized purchase amounted to malpractice. These two terms were defined under clause (o) and (p). The said two terms are defined as under:-

> "(o) "unauthorised exchange" means transfer or receipt of the product from a dealer or consumer to another dealer or consumer or to any other person in contravention of the directives issued by the State Government or the oil companies;"

> "(p) "unauthorised purchase" means purchase of the product from sources other than those authorized by the oil companies;"

6. The learned Chief P.P. submitted that, therefore, the petitioners had, without any authorization sold the diesel to the third party which was prohibited under the Act. He submitted that the petitioners are, therefore, liable to be prosecuted under the provisions of the Act and the Rules framed thereunder.

7. I have given my anxious consideration to the

submissions made by both the Counsel. In my view, the FIR prima facie does not disclose the commission of any offence by the present petitioners. The present petitioners, admittedly, are authorized dealers. The order issued by the Ministry of Petroleum and Natural Gas dated 19/12/2005 does not disclose that there is any restriction on the quantity which can be sold by an authorised dealer. The motor spirit and high speed diesel oil is to be sold through the authorised dealer only and the intention of the Government appears to be to regulate the unauthorised transfers and unauthorised purchases of petroleum products. In the present case, the petitioners have annexed a Daily Sales Register which indicates that they had sold 12000 litres of diesel oil to one Nawale who is a Government Contractor. Therefore, there is no prima facie evidence to indicate that the petitioners were in any way connected with further use of the product which was sold either by way of unauthorised exchange or distribution. Prima facie case, therefore, is made out for grant of anticipatory bail. Besides, two other main accused viz. driver and the manager have been released on bail by order dated 17/2/2006 by the Additional Sessions Judge, Kolhapur. The investigation also is almost over. Therefore, in the event of the arrest of the Petitioners in connection

with C.R. No.7 of 2006 registered at Vadgaon Police Station, Kolhapur for the offence punishable under sections 3 and 7 of the Essential Commodities Act, under section 285 of the IPC and under sections 130 and 177 of the Motor Vehicles Act, they be released on bail in the sum of Rs 10,000/- each with one or two sureties in the like amount each. Petitioners shall co-operate with the police and shall report to the concerned Police Station as and when called for. It is clarified that the Petitioners shall be called at reasonable hours i.e. during 11.00 a.m. to 5.00 p.m.

8. Application is accordingly disposed of.

V.M. KANADE, J.